

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Policy and Rules Concerning the)
Interstate, Interexchange Marketplace)

CC Docket No. 96-61

Implementation of Section 254(g) of the)
Communications Act of 1934,)
as amended)

1998 Biennial Regulatory Review --)
Review of Customer Premises Equipment)
and Enhanced Services Unbundling Rules)
in the Interexchange, Exchange Access)
and Local Exchange Markets)

CC Docket No. 98-183

To the Commission:

REPLY COMMENTS
OF THE
AMERICAN PETROLEUM INSTITUTE

The American Petroleum Institute (API), by its undersigned attorneys, hereby respectfully submits these Reply Comments in response to the Further Notice of Proposed Rulemaking (*Further Notice*) released by the Federal Communications Commission (Commission) on October 9, 1998.¹

¹ 63 Fed. Reg. 205 (Oct. 23, 1998) (*"Further Notice"*).

DISCUSSION

1. The Record Unequivocally Supports the Removal of Bundling Restrictions for Nondominant Interexchange Carriers

The Comments reflect broad support for the core proposal of the *Further Notice* to permit nondominant carriers to bundle interexchange telecommunications services with customer premises equipment (CPE) and enhanced services.² Even the Consumer Electronics Manufacturers Association (CEMA) acknowledges that nondominant interexchange providers should be allowed to bundle interexchange services with CPE and enhanced services.³ The principal issues are whether nondominant, competitive local exchange carriers should be permitted to bundle local services, enhanced services and/or CPE and whether this flexibility should also be extended to the local service and access offerings of the dominant incumbent local exchange carriers (ILECs).⁴

² *AT&T* Comments at 4; *Competitive Telecommunications Association* Comments at 1 (supporting the removal of bundling restrictions for all nondominant carriers); *KMC Telecom, Inc.* at 2 (stating that nondominant carriers should be permitted to bundle CPE and enhanced services with telecommunications service); *MCI/WorldCom* Comments at 29; and *Sprint* Comments at 3. All access services associated with interexchange offerings provided by the interexchange carriers would be eligible for such bundling.

³ *Consumer Electronics Manufacturers Association (CEMA)* Comments at 4-9 (supporting bundling for nondominant carriers).

⁴ *Ameritech* Comments at 3; *Bell Atlantic* Comments at 15; *BellSouth* Comments at 3; *Cincinnati Bell Telephone Company* Comments at 2; *GTE* Comments at 11; *SBC Communications* Comments at 5; and *US West Communications, Inc.* Comments at 1.

At an absolute minimum, there is ample record support for the Commission to move forward in the immediate future and permit the bundling of interexchange services (domestic and international) with enhanced services and/or CPE. API would support an incremental approach to lifting the bundling restriction, deferring if necessary the question of whether competitive local exchange carriers (CLECs) and/or ILECs should be permitted to bundle local and stand-alone access services with enhanced services and CPE.

2. All Carriers Permitted to Bundle CPE and Enhanced Services Should Be Obligated to Offer Telecommunications Services on a Stand-Alone Basis

As API stated in its Comments, the major caveat or precondition for the elimination of the bundling restriction is that telecommunications service providers remain obligated to provide telecommunications services on a stand-alone basis. Thus, API opposes AT&T's and MCI/WorldCom's position that carriers should have the flexibility to offer basic telecommunications services on a "bundled-only" basis.⁵ This position fails to account for a common carrier's basic obligation to serve the public indiscriminately and to provide common carrier service on terms that are just, reasonable, and nondiscriminatory.⁶ Further, as CEMA suggests, it would be incongruous for the

⁵ *AT&T Comments* at 14 (stating that there is no need for an unbundled option); *MCI/WorldCom Comments* at 36. API assumes that a "bundled only" option pertains to an enhanced service (which always includes a basic service component), and a separate, unrelated basic telecommunications service, such as conditioning the availability of interstate 800 Service with the purchase of the carrier's High-Speed Internet Access service.

⁶ 47 U.S.C. §§ 201-202.

Commission to allow the provision of basic services on a stand-alone basis for wireless, and not wireline services, when the end-user needs are the same in both markets.⁷ API agrees with CEMA that as nondominant carriers bundle CPE with their transmission services, these carriers must also “make a ‘service-only’ option available to subscribers - a requirement that would benefit consumers by ensuring that those consumers that do not wish to purchase carrier-provided CPE may obtain transmission services only.”⁸ US WEST Communications, Inc. (US WEST) expressed the same position, stating “[o]nly two simple bundling requirements are needed to protect consumers and to ensure adequate network disclosure: (1) carriers cannot offer basic transmission service without disclosing the interface between the carrier transmission service and the CPE or enhanced service;⁹ and (2) carriers must offer a transmission service which does not include the CPE or enhanced services. These requirements are already compelled by the general common carrier obligation, the statutory requirements of Sections 201 and 202 of the Communications Act of 1934, as amended (the “Act”), and existing network disclosure requirements.”¹⁰

⁷ CEMA Comments at 9 (citing *Bundling of Cellular Customer Premises Equipment and Cellular Service*, Report and Order, 7 FCC Rcd 4028, 4032 (1992) (“*CPE Cellular Bundling Order*”).

⁸ CEMA Comments at 9.

⁹ API prefers that the disclosure obligation be coupled with the requirement that interfaces with basic services be based upon nonproprietary, open standards. See discussion *infra* Section 3.

¹⁰ US WEST Communications, Inc. Comments at 6-7. See also 47 U.S.C. §§ 201-202.

API agrees with US WEST that the basic transmission service must be offered on a stand-alone basis. To permit "bundled-only" offerings would undermine the long-standing statutory and judicial definition of common carriage. "Bundled-only" offerings could have the effect of transforming the unregulated offerings into elements of common carrier service: "if a customer cannot purchase the common carrier service without the CPE or enhanced services, then these services would be subsumed into the overall basic transmission service."¹¹ As US WEST suggests, such "bundled only" options would undermine the benefits of the detariffed and unregulated status of CPE and enhanced services which all segments of the public have enjoyed since the adoption of *Computer II*.¹²

3. The Commission Should Require Non-Proprietary, Open Standards for Network Interfaces

The record reflects broad support for the continued disclosure of network interfaces to ensure the interoperability of basic services and enhanced services and CPE offerings. As expressed by AT&T and US WEST, carriers should continue to be required to release information necessary for all CPE and enhanced services to interconnect with

¹¹ *Id.* at 6.

¹² *Amendment of Section 64.702 of the Commission's Rules and Regulations*, CC Docket No. 20828, Final Decision, 77 FCC 2d 384 (1980) (*Computer II*); Memorandum Opinion and Order on Reconsideration, 84 FCC 2d 50 (1980); Memorandum Opinion and Order on Further Reconsideration, 88 FCC 2d 512 (1981), *aff'd sub nom.*, *Computer and Communications Indus. Ass'n v FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983).

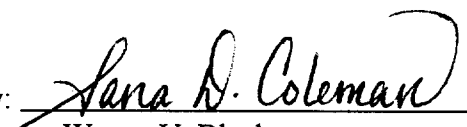
carriers' networks.¹³ These carriers further suggest that full disclosure obviates the need for network interfaces to be based on open, nonproprietary standards. API does not share this view. Rather, there is a strong preference among users for both full disclosure and use of open, non-proprietary network interfaces. This approach maximizes competition in all markets. API urges the Commission not to endorse AT&T's preferred interpretation of the all-carrier rule at this time.¹⁴

CONCLUSION

WHEREFORE THE PREMISES CONSIDERED, the American Petroleum Institute respectfully urges the Federal Communications Commission to adopt its proposal to eliminate the bundling prohibitions, at least with respect to interexchange services, and that users retain the option to purchase basic telecommunications services on an unbundled basis.

Respectfully submitted,

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¹³ *AT&T* Comments at 13-14; *US WEST* Comments at 6-7.

¹⁴ *See AT&T* Comments at 13-14.

CERTIFICATE OF SERVICE

I, Cassandra L. Hall, hereby certify that I have served a copy of the foregoing "Comments" of the American Petroleum Institute on this 23rd day of December, 1998, upon the following parties *via* first-class mail, postage pre-paid to the following:

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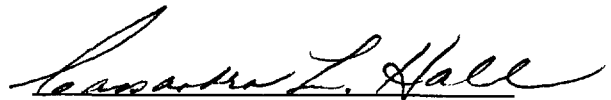
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